



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Express Signs International

File: B-227144

Date: September 14, 1987

DIGEST

1. Protest that specification for the acquisition of an exterior/interior signage system is unduly restrictive is denied where the agency's determination of its minimum needs and the necessity of restricting competition is not shown to be unreasonable.
2. Agency procurement of design and installation of signage system as a total package rather than on the basis of separate awards for each phase was reasonable where the agency reasonably concluded on the basis of prior difficulties encountered with separate awards for each phase that the total package approach would best meet its need.

DECISION

Express Signs International (ESI) protests as unduly restrictive request for proposals (RFP) No. DACA87-87-R-0058 issued by the United States Army, Army Engineer Division in Huntsville to plan, program, design, fabricate and install a total signage system at the Tripler Army Medical Center (TAMC) in Honolulu, Hawaii. ESI also objects to the procurement procedures being used to acquire this signage system.

We deny the protest.

The solicitation, a 100-percent small business set-aside, was issued on March 17, 1987, with an amended closing date of May 22. The RFP contemplated the award of a firm-fixed-price contract to be performed segmentally around the extensive renovation construction presently underway at the TAMC facility. The RFP further advised offerors that award would be made to the offeror, whose offer, conforming to the solicitation, is determined most advantageous to the government, cost and other factors considered.

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A preproposal conference and site visit was held by the Army on April 3. At that time, all attendees, including the protester, were given an overview of the proposed contract requirements and a walk-through of the TAMC facility. The attendees were permitted to submit written questions both before and during the preproposal conference. In turn, the Army provided written responses and copies of all questions and answers pertaining to this solicitation to all prospective offerors. The Army received four offers by the closing date. ESI did not submit an offer; however prior to the date for receipt of proposals it filed this protest with our Office.

The protester makes several arguments, the thrust of which is that the Army failed to specify its needs and solicit proposals in a manner designed to achieve maximum competition.

The protester alleges that the solicitation, by contemplating a firm-fixed-price award of a single contract for the design and installation of a total signage system, unduly restricts competition. ESI asserts that prospective small business contractors cannot develop proposals on a firm-fixed-price basis "absent a design package." Thus, the protester contends that the Army should divide the requirements and make an award in two phases: (1) to design the specifications, schedules and quantities including all related work such as demolition, patch and paint; and (2) for the fabrication and installation of the signage system utilizing the design specifications developed in phase 1.

The agency advances a number of reasons why it deemed the total package type of contract to be appropriate: first, on the basis of advance procurement planning and market research the contracting officer concluded that a sufficient number of firms are qualified to perform such a contract. Second, the contracting officer reports that unacceptable delays, possibly up to 5 months, would result from a two-phase acquisition of this system. Third, the difficulties associated with determining responsibility for performance deficiencies are minimized by having only one, rather than two, contractors involved in the project. Fourth, the installation of the signage system must be coordinated with the ongoing renovation at TAMC and this can be accomplished with minimum disruption at the facility with the use of one contractor. Finally, the agency cites difficulties it previously experienced as a result of separate design and installation contracts to furnish the existing signage system at TAMC.

We recognize that procurements by an agency on a total package basis can restrict competition and we have objected

to such procurements where that approach did not appear necessary to satisfy the agency's minimum needs. See Korean Maintenance Co., B-223780, Oct. 2, 1986, 86-2 C.P.D. ¶ 379 at 3. However, we have also recognized that the possibility of obtaining economies of scale or avoiding unnecessary duplication of costs may also justify the total package approach. Id. Thus, the decision whether to procure by means of a total package approach or to break out divisible portions of the total requirement for separate procurements will not be disturbed absent a clear showing that the agency's determination lacks a reasonable basis. Id.

In this instance, the agency has provided extensive justification for the use of a total package approach. We do not believe that the protester has shown that the agency unreasonably determined that this single award procurement will best meet its needs. As stated above, the agency contends that the existing signage system--so inadequate that both the Army and the protester agree that it causes serious disruption at the TAMC facility--was procured through the use of separate design and installation contracts. The Army alleges that the unsatisfactory results of this two-phase acquisition were partly attributable to the inability of the design and development contractor to properly interface this work without having a full understanding of the interrelated fabrication and installation requirements. In its comments on the agency report, the protester does not refute this, or any of the other stated bases for the use of the total package approach. Under these circumstances, we cannot conclude that the agency's decision to make a single award for both the design and installation of a total signage system lacks a reasonable basis. Accordingly, we will not question the agency's total package approach.

Related to, but distinct from, the protester's objections to the use of a total package approach, is the protester's allegations that the use of performance specifications for this acquisition is improper. ESI contends that the solicitation is inadequate because the solicitation did not contain sufficient information concerning the scope of work; the time of performance; design schedules or quantitative estimates of the work to be performed. The protester asserts that the solicitation should have contained detailed information on the number of signs to be replaced; the square footage of walls to be repainted or patched because of sign removal or replacement; and ceiling tile specifications and square footage of ceiling tiles to be replaced.

The agency's response is that the solicitation adequately described the requirements for the signage system being procured and that it was not necessary for the solicitation

to have included a detailed design specification, particularly since a major component of the solicitation is for design and developmental services. Moreover, the agency reports that the performance based specifications included in the solicitation sufficiently defined the operational characteristics for the signage system so that qualified signage contractors with the necessary experience and design capabilities could propose innovative approaches in signage design and development that will meet the agency's minimum needs.

As the Army correctly points out, we have stated that a solicitation must contain sufficient information to allow offerors to compete intelligently and on equal terms. Dynalelectron Corp., 65 Comp. Gen. 290 (1986), 86-1 C.P.D. ¶ 151 at 11-12. Specifications must be free from ambiguity and must describe the agency's minimum needs accurately. There is no legal requirement, however, that a competition be based on specifications drafted in such detail as to eliminate completely any risk for the contractor, or that the procuring agency remove every uncertainty from the mind of every prospective offeror. Id.

We reviewed the relevant parts of the solicitation, ESI's letters to the agency and the agency's responses thereto. We cannot conclude from this review that the solicitation was deficient. The solicitation stated in the scope of work that the objective of this proposed contract is the design and installation of a signage system such that the least informed user of the facility is self-sufficient in traveling throughout an unfamiliar environment. The agency states, and the protester does not refute, that section "C" of the solicitation clearly and completely sets forth the required characteristics and capabilities for the exterior/interior signage system. For example, the agency notes that in this section, paragraphs 1 and 2 describe the facility and the ongoing construction conditions; paragraphs 2.1.1, 2.2 and 2.3 advise offerors on the general planning, programming and design requirements; paragraph 2.3.3. informs offerors of the design technical data considerations which must be considered and addressed; and, in paragraph 2.3.4 the specifications identify specific design criteria and design constraints.

ESI argues however that use of performance based specifications in this acquisition is improper because, in its view, architectural signage is a commercial product which is "capable of being accurately specified and quantified." Therefore, the protester contends that prospective small business contractors should not be required to make extensive preproposal surveys to develop proposals which may be

"based on something different than visualized by the COE/TAMC."

In our view, the agency properly utilized performance specifications to describe its minimum needs where, as here, one of the stated purposes for this acquisition was to solicit innovative approaches in signage design and development. (Cf. Fleetwood Electronics, Inc., B-216947.2, June 11, 1985, 85-1 C.P.D. ¶ 664, wherein we found the use of specific design requirements improper because the agency was capable of stating its minimum needs less restrictively in performance or functional terms.) Moreover, as noted above, the Army has provided extensive justification for the use of performance specifications and has persuasively argued that the solicitation provided enough information to enable offerors to prepare their proposals. Additionally, since none of the four offerors which responded to the solicitation has alleged that the specifications were insufficiently detailed, it does not appear that the RFP inhibited competition or prevented offerors from preparing proposals properly. As a result, we conclude that the protester has failed to show that the specifications were inadequate or prevented competition on an equal footing.

Finally, the protester alleges that the specifications contain undefined and unspecified work such that it believes the agency failed to carry out advance procurement planning and market research prior to developing the specifications. ESI states that the Army has failed to provide any quantities or estimates of (1) the signs to be replaced; (2) square footage of walls to be patched or repainted as a result of sign removal; (3) square footage of ceiling tiles, tile specification and source; and (4) the agency has not furnished any exterior signage drawings.

Initially, the Army explains that, contrary to the protester's assertions, the specifications were developed as a result of extensive procurement planning and market research. The technical specifications were reportedly drafted with the aid of an internal user need study^{1/} prepared in May 1986 and a market research analysis performed by the Army's principal drafter of the technical requirements. Thus, the agency contends that it did engage in advance procurement planning and market research as required by 10 U.S.C. § 2305(a)(1)(A)(ii) (Supp. III 1985).

^{1/} Because the Army considers this internal user need study to be competition-sensitive, this decision will not set forth the precise findings or recommendations contained in the copy furnished to our Office, but instead will only make general references thereto.

Based on our review of the record, we find that prior to the present acquisition, the Army did indeed contract for a study of the interior signage requirements at TAMC. The report that was prepared as a result of that study, was furnished only to our Office because as noted previously, the Army considers it to be competition-sensitive. In reviewing the various findings and recommendations contained in this report, we find that the agency apparently used some of the recommendations in drafting the specifications at issue herein.

In any event, we find that the other issues raised by the protester concerning the indefiniteness of the specifications to be without merit. First, ESI's allegation that the Army did not provide information on the number of existing signs to be removed is not supported by the record. In the written questions and answers furnished to all prospective contractors, the Army indicated that approximately 2,000 existing signs were to be removed. The approximate number of signs to be replaced was not provided since that number is necessarily dependent on the signage concept of the successful contractor.


Second, as to the extent of repair, repainting of walls and tile replacement, the specification imposes a requirement for this repair work only if the walls or ceilings are damaged during signage removal or installation. In any event, the agency disputes the protester's assertion that it cannot reasonably calculate the square footage of walls to be repatched or repainted. The agency notes that all potential contractors were advised that they would be permitted additional site visits.

With regard to ceiling tile replacement, the Army reports that the successful contractor would be liable for replacement of ceiling tiles only if damaged through sign removal or installation. The agency states that the majority of the existing overhead signs are hanging from suspended ceiling frames and, in its view, a reasonably competent contractor should be able to remove these signs and replace the affected ceiling tiles with minimum difficulty. ESI has not rebutted any of the agency's explanation that the potential contractors were provided with sufficient information in the areas that it identified as being undefined.

The Army further reports, and the protester does not refute, that it did provide existing exterior signage location drawings to all prospective contractors. For example, the agency states that it furnished drawings for the signing and stripping of areas 1, 2, 3, and 6; it furnished the plan for the widening of Jarrett White Road and the detailed plan for

the exterior hospital signs. We therefore find ESI's contentions to be without merit.

Accordingly, the protest is denied.


Harry R. Van Cleve
General Counsel